NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,	
Plaintiff,	
v.	
RONALD JULIEN,	**CRIMINAL No. 2006/0021-02**
Defendant.	

ATTORNEYS:

Alphonso A. Andrews, AUSA
St. Croix, Christiansted V.I.
Attorney for the Government,

Martial A. Webster, Esq.
St. Croix, Frederiksted V.I.
Attorney for Defendant Julien.

MEMORANDUM OPINION

Before the Court is a motion for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."), or in the alternative, for a new trial pursuant to Fed. R. Crim. P. 33.

Facts

Detective Angel Castro ("Castro") is an undercover agent assigned to the Narcotics Division of the High Intensity Drug Trafficking Area Task Force("HIDTA") in Puerto Rico. Castro came

to St. Croix on an undercover assignment for the Narcotics Division of HIDTA on St. Croix to investigate Ronald Julien, a self-employed taxi driver on St. Croix. The investigation was based on information that Julien was acting as a "broker" for drug dealers.

On or about May 18, 2006, Castro arrived in St. Croix and contacted Julien for transportation services. During the ride from the airport, Castro initiated a conversation with Julien about drugs, telling Julien that he wanted to purchase an ounce of crack cocaine. Julien responded that he did not deal with drugs, but that he knew someone who did. That person was later revealed to be Burnel Iles. Julien subsequently agreed to contact Iles. Throughout the rest of that day and into the next morning, Castro contacted Julien several times to inquire whether he had contacted Iles.

On or about May 19, 2006, Julien met Castro at the Christiansted Fort ("Fort"). Julien told Castro that he had contacted Iles, and that Castro must accompany him to Iles' home. Castro refused and told Julien to bring Iles to the Fort. Julien left the Fort and returned with Iles approximately fifteen minutes later. After dropping Iles at the Fort, Julien left. Castro and Iles then discussed how they were going to conduct the transaction and Iles left to get the drugs. Julien returned to

the Fort in his taxi van and asked Castro "if everything okay." [Transcript of Trial at 46, *United States v. Julien*, No. 2006/21-02] Castro responded "yes, everything set up. He's coming back with the drugs." [*Id*.] Iles returned to the Fort with the drugs, and Castro purchased 32 ounces of crack cocaine for $750.00 from Iles.

At trial, Iles testified that Julien had previously brokered a sale for him. In particular, Iles indicated that Julien had brought a "one-foot guy" to his house to buy drugs. [*Id*. at 145] In response to a question regarding the role that Julien played, Iles stated: "The role he play is bring those guys to me to buy drugs." [*Id*. at 15-16]

The jury convicted Julien of aiding and abetting possession with intent to distribute crack cocaine. Julien now argues that:

1. There was insufficient evidence to convict the defendant;
2. The government failed to prove beyond a reasonable doubt that the defendant was not entrapped;[1] and
3. The defendant was unconstitutionally convicted because of failure of proof beyond a reasonable doubt.

[1] A proper jury instruction on entrapment was given by the Court.

Discussion

A. Rule 29 Judgment of Acquittal

For a judgment of acquittal to be granted, the court must decide, as a matter of law, that the evidence presented at trial was insufficient to support the conviction. *United States v. Cohen*, 455 F. Supp. 843, 852 & n. 7 (E.D.Pa. 1978), *aff'd*, 594 F.2d 855 (3d Cir.), *cert. denied*, 441 U.S. 947 (1979). In making that determination, the trial court is required to view the evidence in the light most favorable to the prosecution and to draw all reasonable inferences therefrom in the government's favor. *United States v. Ashfield*, 735 F.2d 101, 106 (3d Cir.), *cert. denied*, 469 U.S. 858 (1984).

"Strict deference [must] be accorded the jury's findings; the court does not 'ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *United States v. Charles*, 949 F. Supp. 365, 367 (D.V.I. 1996). The inquiry to be made is whether, in light of the evidence, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Id. (citing Ashfield*, 735 F.2d at 106) (noting "[o]ur task is not to decide what we would conclude had we been the finders of fact; instead, we are limited to determining whether the conclusion chosen by the [fact-finders] was permissible"). A trial court has

the duty to grant a judgment of acquittal "when the evidence is so scant that the jury could only speculate as to the defendant's guilt." *United States v. Bazar*, 2002 WL 31640578, *2 (D.V.I. 2002).

B. Rule 33 Motion for a New Trial

When deciding a Rule 33 motion for a new trial, the court is provided somewhat more discretion than what is afforded under Rule 29. Under Rule 33, the court may grant a new trial "in the interest of justice." *United States v. Charles*, 949 F. Supp. 365, 368 (D.V.I. 1996). In assessing such "interest," the court may weigh the evidence and credibility of witnesses. *United States v. Bevans*, 728 F. Supp. 340, 343 (E.D.Pa. 1990), *aff'd*, 914 F.2d 244 (3d Cir. 1990). If the court determines that there has been a miscarriage of justice, the court may order a new trial. *Id*. The burden is on the defendant to show that a new trial ought to be granted. *United States v. Clovis*, 1996 WL 165011, *2 (D.V.I. 1996).

Analysis

1. Sufficiency of the Evidence

Julien claims that the evidence at trial was insufficient to sustain a guilty verdict. Pursuant to 18 U.S.C. § 2, "[w]hoever commits an offense against the United States or aids, abets,

counsels, commands, induces or procures its commission, is punishable as a principal."

To be convicted of the crime of aiding and abetting, the government must prove beyond a reasonable doubt (1)that another committed the substantive offense, (2) that the one charged with aiding and abetting knew of the substantive-offense commission, and (3) that the one charged with aiding and abetting acted with the intent to facilitate it. *United States v. Cartwright*, 359 F.3d 281, 287 (3d Cir. 2004).

Essentially, the court must determine whether under the attendant circumstances Julien can be found guilty of aiding and abetting possession with intent to distribute crack cocaine. The case law is clear that one who brings two individuals together for the purpose of conducting an illegal act is guilty of aiding and abetting. *See United States v. Frorup*, 963 F.2d 41, 43 (3d Cir. 1992)(upholding conviction for arranging the sale of cocaine between a dealer and an undercover agent); *United States v. Poston*, 902 F.2d 90, 94 (D.C. Cir. 1990)(upholding conviction of possession for knowingly driving an acquaintance to a location to sell drugs); *United States v. Juarez*, 566 F.2d 511 (5th Cir. 1978)(affirming conviction for aiding and abetting possession with the intent to distribute where the defendant assumed the responsibility of communicating an order to a drug dealer).

The facts here are no different from those cases. Julien knew that Castro wanted to purchase crack cocaine, and he brought Castro and Iles together to facilitate that sale. Viewing the evidence presented at trial in a light most favorable to the government, there was sufficient evidence for a jury to convict Julien.

Julien also argues that he was unconstitutionally convicted because the government failed to prove its case beyond a reasonable doubt, and thus a new trial is warranted. However, where the evidence is sufficient to convince any rational trier of fact of the defendant's guilt beyond a reasonable doubt, then the conviction must stand. *United States v. Leo*, 941 F.2d 181, 191 (3d Cir. 1991)*; United States v. Resto*, 824 F.2d 210, 212 (2d Cir. 1987)(citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The government need not exclude "every possible hypothesis of innocence," *United States v. Friedman*, 998 F.2d 53, 59 (2d Cir.1993), and it is the task of the jury, not the court, to choose among competing inferences. *United States v. Martinez*, 54 F.3d 1040, 1043 (2d Cir. 1995). As discussed above, there was sufficient evidence for a reasonable jury to convict Julien, and there has been no miscarriage of justice to warrant a new trial.

2. Entrapment

Julien also argues that the government failed to prove beyond a reasonable doubt that he was not entrapped. This argument must fail because the relevant inquiry is whether Julien has met his burden of production in showing entrapment. *See United States v. Fedroff*, 874 F.2d 178, 185 (3d Cir. 1989)(discussing defendant's burden of production). "Entrapment occurs when a defendant who was not predisposed to commit the crime does so as a result of the government's inducement." *United States v. Jannotti*, 673 F.2d 578, 597 (3d Cir. 1982). In order to raise an entrapment defense, "a defendant must come forward with evidence as to both inducement and non-predisposition." *United States v. Gambino*, 788 F.2d 938, 943 (3d Cir. 1986); *United States v. Levin*, 606 F.2d 47, 49 (3d Cir. 1979).

It is only after this showing is made that the burden shifts to the prosecution to prove beyond a reasonable doubt that the defendant was not entrapped. *Gambino*, 788 F.2d at 943. The government must prove either (1) there was no inducement or (2) if there was inducement, the defendant was predisposed to commit the crime. *United States v. El-Gawli*, 837 F.2d 142, 148 (3d Cir. 1988).

Julien has not offered any evidence at trial to show inducement by the government. Inducement can be shown by the

following: "persuasion, fraudulent representation, threats, coercive tactics, harassment, promises of reward or pleas based on need, sympathy or friendship." *United States v. Marino*, 868 F.2d 549, 551 -552 (3d Cir. 1989). However, "[t]he government's mere solicitation to commit a crime [is] insufficient evidence of inducement to warrant entrapment[.]" *Fedroff*, 874 F.2d at 185; *see also United States v. Ramirez*, 1997 WL 602753, *3 (E.D.Pa. 1997)(stating that solicitation of the defendant through numerous telephone calls, which the defendant characterized as "browbeating" insufficient to constitute inducement); *United States v. Velasquez*, 802 F.2d 104, 106 (4th Cir. 1986)(noting that thirty telephone calls by agent to defendant to "suggest" that defendant acquire cocaine not sufficient to show inducement). Likewise, the conduct in this case was insufficient to show inducement by the government. *See Fedroff*, 874 F.2d at 184 (stating "mere solicitation, without more, will not satisfy the defendant's burden of production on inducement").

Moreover, Julien also has not offered any evidence to show a lack of predisposition to commit the offense. In order for the burden to shift to the government to prove beyond a reasonable doubt that Julien was not entrapped, Julien must meet his burden of production on *both* inducement and non-predisposition. *Gambino*, 788 F.2d at 943. Because Julien has failed to meet this burden,

it is not necessary to decide whether or not the government proved beyond a reasonable doubt that Julien was not entrapped.

Conclusion

Julien's motion for judgment of acquittal or in the alternative for a new trial will be denied. An appropriate Order will follow.

/s/
Curtis V. Gómez
Chief Judge

Attest:

Wilfredo F. Morales
Clerk of Court

By:_____
Deputy Clerk

Copies to:

Hon. Geoffrey W. Barnard
Alphonso A. Andrews, AUSA
Martial Webster, Esq.
Claudette Donovan
Olga Schneider
Lydia Trotman
Renée André